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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-FV-10-0094; FV11-985-1B IR]

**Marketing Order Regulating the Handling of Spearmint Oil
Produced in the Far West; Revision of the Salable Quantity
and Allotment Percentage for Class 1 (Scotch) Spearmint Oil
for the 2011-2012 Marketing Year**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the quantity of Class 1 (Scotch) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year. This rule increases the Scotch spearmint oil salable quantity from 733,913 pounds to 876,596 pounds, and the allotment percentage from 36 percent to 43 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee unanimously recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and

to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2011, through May 31, 2012; comments received by [Insert date 60 days after the date of publication in the Federal Register] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing

Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the

marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Scotch spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year, which ends on May 31, 2012.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2011-2012 marketing year were recommended by the Committee at its October 13, 2010, meeting. The Committee recommended salable quantities of 694,774 pounds and 1,012,983 pounds, and allotment percentages of 34 percent and 44 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on March 4, 2011 (76 FR 11971). Comments on the proposed rule were solicited from interested persons until April 4, 2011. No comments were received. A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2011-2012 marketing year was published in the **Federal Register** on May 13, 2011 (76 FR 27852).

The Committee met again on August 17, 2011, to consider amending the salable quantities and allotment percentages Scotch and Native spearmint oil for the 2011-2012 marketing year. At the meeting, the Committee recommended increasing the salable quantities to 733,913 pounds and 1,266,161 pounds, and allotment percentages to 36 percent and 55 percent, respectively, for Scotch and Native spearmint oil. The 2011-2012 marketing year salable

quantities and allotment percentages were subsequently amended to those levels by an interim rule published in the **Federal Register** on October 6, 2011 (76 FR 61933).

Comments on the interim rule were solicited from interested persons until December 5, 2011. No comments were received in response to the interim rule. A final rule establishing the amended salable quantities and allotment percentages was published in the **Federal Register** on February 3, 2012 (77 FR 5385).

This rule further revises the quantity of Scotch spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year, which ends on May 31, 2012. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met on February 22, 2012, to consider pertinent market information on the current supply, demand, and price of spearmint oil. In a vote with seven members in favor and one member opposed, the Committee recommended that the 2011-2012 Scotch spearmint oil allotment percentage be increased by 7 percent, from 36 percent to 43 percent. The Committee member that voted against the increase concurred with the rest of the Committee members that an increase was justified; however,

he felt that a 7 percent increase was an excessive response to the current Scotch spearmint oil marketing conditions.

Thus, taking into consideration the following discussion, this rule increases the 2011-2012 marketing year salable quantity and allotment percentage for Scotch spearmint oil to 876,596 pounds and 43 percent.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The total industry allotment base for Scotch spearmint oil for the 2011-2012 marketing year was initially estimated by the Committee to be 2,043,453 pounds. When that allotment base was applied to the originally established allotment percentage of 34 percent, the initially established 2011-2012 marketing year salable quantity was set at 694,774 pounds.

The total allotment base is adjusted at the end of each marketing year to account for the bona fide effort

provision of the order. In accordance with § 985.53(e), producers must make a bona fide effort to produce a quantity of oil equal to or greater than their allotment base. Should a producer fail to produce that amount, their allotment base is reduced by an amount equal to the unproduced portion. The production data used to accurately make this adjustment to the total industry allotment base is not available until after the end of the marketing year. Consequently, since the rule that established the 2011-2012 marketing year initial allotment percentage and salable quantity for Scotch spearmint oil was published prior to the end of the 2010-2011 marketing year, an estimate of the total industry allotment base was relied upon in the calculation of the initial salable quantity for the 2011-2012 marketing year.

After the end of the 2010-2011 marketing year on May 31, 2011, however, the Committee recalculated the final total industry allotment base for Scotch spearmint oil to be 2,038,595 pounds rather than 2,043,453 pounds. The 4,858 pound difference between the estimated number and the final number is the amount of Scotch spearmint oil allotment base that producers failed to produce during the 2010-2011 marketing year.

The Committee met again in August 2011 to consider the current market conditions of the spearmint oil industry and to recommend increases in allotment percentages and salable quantities for both Scotch and Native spearmint oil. The allotment percentage and salable quantity for Scotch spearmint oil was subsequently increased in an interim rule that was finalized February 3, 2012 (77 FR 5385). That rule increased the allotment percentage 2 percent and effectively increased the 2011-2012 marketing year salable quantity by 142,683 pounds. The total salable quantity was increased to 733,913 pounds and was calculated by applying the increased allotment percentage (36 percent) to the revised total industry allotment base of 2,038,595 pounds and adjusted for rounding.

This interim rule further increases the allotment percentage and salable quantity for the remainder of the 2011-2012 marketing year, which ends May 31, 2012. The Scotch spearmint oil salable quantity is increased from 733,913 pounds to 876,596 pounds, and the allotment percentage from 36 percent to 43 percent. The additional amount of Scotch spearmint oil is made available by releasing oil from the reserve pool. The reserve pool is composed of Scotch spearmint oil that producers have

produced in prior years in excess of their annual allotment and is restricted in its disposition. The oil is held in storage and may only be released to fill the producer's future production deficiencies or when additional oil is needed to satisfy normal market demand. The reserve is an important component of volume regulation, providing a mechanism to supply the market in times of unanticipated increases in the demand for spearmint oil. As of February 1, 2012, the Committee estimated the reserve pool of Scotch spearmint oil to be 366,988 pounds.

When the allotment percentage increase established by this rule is applied to each individual producer, that producer may take up to an amount equal to such allotment from their reserve of Scotch spearmint oil. Producers that do not have excess oil in the reserve pool equal to or greater than their respective share of the pro rata increase in the salable quantity will not be able to exercise the full marketing rights associated with such an increase. Also, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year. As a result, the Committee has calculated that deficiencies

in individual producer's oil reserves will most likely result in a reduction in the amount of Scotch spearmint oil that will actually be made available to the market by this rule. The Committee estimates that as much as 24,453 pounds of the additional salable quantity will not actually enter the market.

Therefore, the anticipated effect of the 7 percent increase in the salable percentage established by this rule is that an estimated total of 1,079,384 pounds of Scotch spearmint oil will be available for the 2011-2012 marketing year. This amount is lower than the established salable quantity and accounts for the expected producer reserve pool deficiencies. The Committee believes the net effect of this rule is to release an estimated additional 118,230 pounds of Scotch spearmint oil into the market.

The following summarizes the Committee recommendations:

Scotch Spearmint Oil Recommendation

(A) Estimated 2011-2012 Allotment Base - 2,043,453 pounds. This is the estimate on which the original 2011-2012 Scotch spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2011-2012 Allotment Base - 2,038,595 pounds. This is 4,858 pounds less than the estimated allotment base of 2,043,453 pounds due to the accounting for producers that failed to produce all of their 2011-2012 allotment.

(C) Original 2011-2012 Allotment Percentage - 34 percent. This was unanimously recommended by the Committee on October 13, 2010.

(D) Original 2011-2012 Salable Quantity - 694,774 pounds. This figure is 34 percent of the originally estimated 2011-2012 allotment base of 2,043,453.

(E) Prior Revision to the 2011-2012 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage - 2 percent. The Committee recommended a 2 percent increase at its August 17, 2011, meeting.

(2) 2011-2012 Allotment Percentage - 36 percent. This figure is derived by adding the increase of 2 percent to the originally established 2011-2012 allotment percentage of 34 percent.

(3) Calculated Revised 2011-2012 Salable Quantity - 733,913 pounds. This figure is 36 percent of the revised

2011-2012 allotment base of 2,038,595 pounds, plus 19 pounds to account for a rounding adjustment.

(4) Computed Increase in the 2011-2012 Salable Quantity - 40,772 pounds. This figure is 2 percent of the revised 2011-2012 allotment base of 2,038,595.

(F) Current Revision to the 2011-2012 Salable Quantity and Allotment Percentage effectuated by this rule:

(1) Increase in Allotment Percentage - 7 percent. The Committee recommended a 7 percent increase at its February 22, 2012, meeting.

(2) 2011-2012 Allotment Percentage - 43 percent. This figure is derived by adding the increase of 7 percent to the revised 2011-2012 allotment percentage of 36 percent.

(3) Calculated Revised 2011-2012 Salable Quantity - 876,596 pounds. This figure is 43 percent of the revised 2011-2012 allotment base of 2,038,595 pounds.

(4) Computed Increase in the 2011-2012 Salable Quantity - 142,702 pounds. This figure is 7 percent of the revised 2011-2012 allotment base of 2,038,595 pounds.

The 2011-2012 marketing year began on June 1, 2011, with an estimated carry-in of 227,241 pounds of salable Scotch spearmint oil. When the estimated carry-in is added

to the revised 2011-2012 salable quantity of 876,596 pounds, the result is a total available supply of Scotch spearmint oil for the 2011-2012 marketing year of 1,103,837 pounds. However, the Committee estimates that only 1,079,384 will actually be available to the market given producer reserve pool deficiencies. Of this amount, 915,964 pounds of oil has already been sold or committed for the 2011-2012 marketing year. This would leave approximately 163,420 pounds to fulfill market needs for the remainder of the marketing year.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers and producers who were not in attendance. By increasing the 2011-2012 Scotch spearmint oil salable percentage by 7 percent, an additional 142,702 pounds of Scotch spearmint oil is theoretically made available to the market. However, as previously discussed, deficiencies in producer's reserves are expected to limit the amount of Scotch spearmint oil that is actually released into the market.

Scotch spearmint oil handlers originally estimated that the trade demand for Scotch oil for the 2011-2012 marketing year may be 850,000 pounds. Sales and commitments for Scotch spearmint oil have already eclipsed that estimate, and the industry expects that market activity will continue through the end of the marketing year. The Committee believes that this rule will release enough oil to satisfy the demand for Scotch spearmint oil for the remainder of the 2011-2012 marketing year and will carry over a sufficient quantity of Scotch spearmint oil into the 2012-2013 marketing year to adequately supply the market.

When the Committee made its original recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2011-2012 marketing year, and again when it recommended the first increase, it anticipated that its actions would provide the industry with an ample available supply. In the interim, the Scotch spearmint oil market has experienced dynamic changes in the demand for oil. The Committee believes that the supply of Scotch spearmint oil that is available to the market without the issuance of this rule would be insufficient to satisfy the current demand at reasonable

price levels. Therefore, the industry may not be able to adequately meet market demand without this increase.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2011-2012 marketing year should be increased to 876,596 pounds and 43 percent, respectively.

This rule relaxes the regulation of Scotch spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2011-2012 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2011-2012 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current

marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increase in the Scotch spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that

small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order and approximately 32 producers of Scotch spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 8 of the 32 Scotch spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or

more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule revises the quantity of Scotch spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year, which ends on May 31, 2011. This rule increases the Scotch spearmint oil salable quantity from 733,913 pounds to 876,596 pounds and the allotment percentage from 36 percent to 43 percent.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of

such products. Without volume control, producers would not be limited in the production and marketing of spearmint oil. Under those conditions, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

Based on projections available at the meeting, the Committee considered a number of alternatives to this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Scotch spearmint oil after careful consideration of all available information, and believes that the levels recommended will

achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 22, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantity and allotment percentage for Scotch spearmint oil for the 2011-2012 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch spearmint oil that may be marketed during the marketing year, which ends on May 31, 2012; (2) the current quantity of Scotch spearmint oil may be inadequate to meet demand for the 2011-2012 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985 - MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 985.230, paragraph (a) is revised to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations.]

§ 985.230 Salable quantities and allotment percentages -
2011-2012 marketing year.

* * * * *

(a) Class 1 (Scotch) oil - a salable quantity of
876,596 pounds and an allotment percentage of 43 percent.

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Dated: April 4, 2012

Robert C. Keeney
Acting Administrator
Agricultural Marketing Service

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